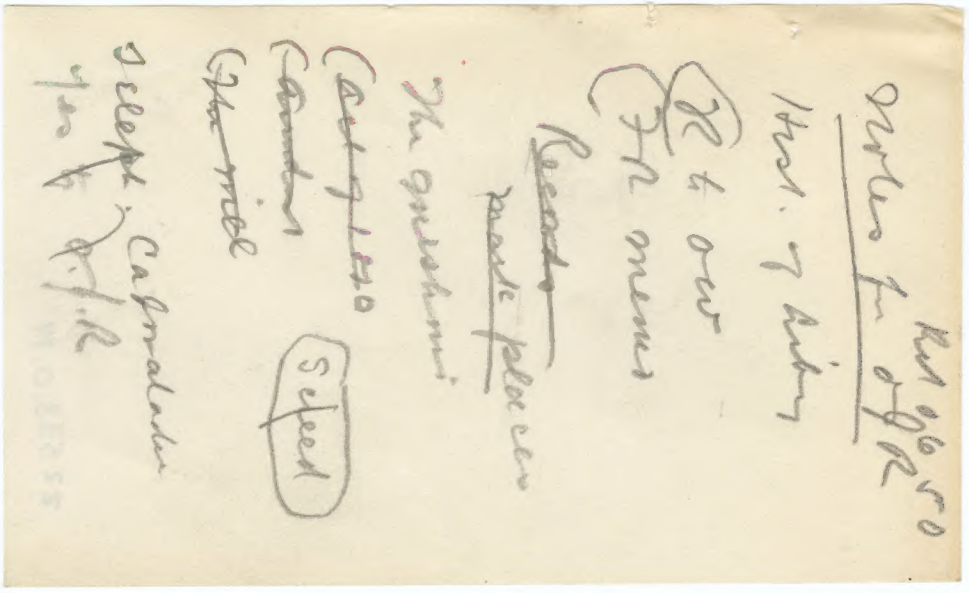


TIFFEN Gray Scale

R G B W G K C Y M

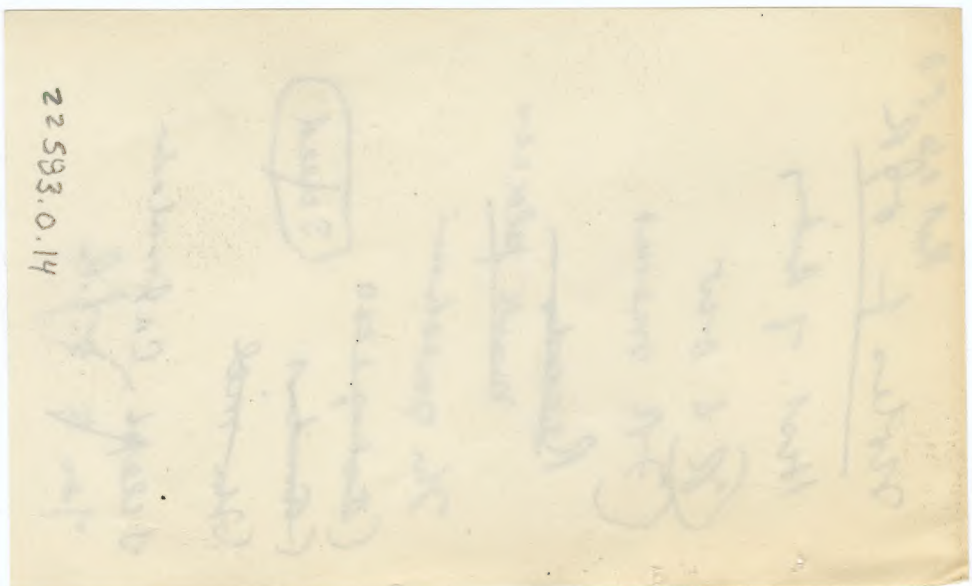
A 1 2 3 4 5 6 M 8 9 10 11 12 13 14 15 B 17 18 19

Inches 1 2 3 4 5 6 7 8

Centimetres 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

TIFFEN Color Control Patches

Blue Cyan Green Yellow Red Magenta White 3/Color Black



Supreme Court of Pennsylvania,

EASTERN DISTRICT.

DONOHUGH

vs.

THE LIBRARY COMPANY OF PHILADELPHIA.

APPELLEE'S BRIEF.

WM. HENRY RAWLE,
R. C. MCMURTRIE.

Allen, Lane & Scott's Printing House, 233 South Fifth Street, Philadelphia.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

DONOHUGH, COLLECTOR OF DELINQUENT TAXES.

APPELLEE'S BRIEF.

The facts appearing upon the record are briefly these :—

By deed dated the first day of July, 1731, the said Library Company, then an association, was founded at Philadelphia, by Benjamin Franklin, James Logan and others as "an institution for the advancement of learning and the more useful dissemination of knowledge," and the first meeting of the directors thereof was held on the eighth day of November, 1731.

The books composing the library were originally placed on the shelves "of Robert Grace's chamber, at his house in Jones' alley," and the librarian was, by the rules, required to permit "any civil gentleman to peruse the books of the library in the library-room."

On the twenty-fifth day of March, A. D. 1742, John, Thomas and Richard Penn, proprietaries of Pennsylvania, by letters patent, reciting that Benjamin Franklin, and others therein named, had, "at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the city of Philadelphia," and "being truly sensible of the advantage that may accrue to the people of this Province by so useful an undertaking, and being willing to encourage the same," incorporated "The Library Company of Philadelphia," aforesaid.

In addition to the original foundation of the said company, it is the trustee, under the will of James Logan, of certain real estate, and of a collection of books known as the Loganian Library. This real estate and collection of books were, by indenture dated the 25th of March, 1760, conveyed by the executors of James Logan to William Allen and others, in trust for certain purposes therein set forth. An addition to the said collection of books was subsequently made by the will of William Logan; and, by an act of the legislature, approved the thirty-first day of March, 1792, reciting that James Logan—the only surviving trustee of the said institution—had requested the legislature that, pursuant to an agreement between himself and the directors of the Library Company of Philadelphia, the real estate and collection of books might be vested in the Library Company aforesaid; and, that power might be given to make such provisions as might most effectually tend to render the said institution beneficial to the public, consistently with the design of the founder, it was enacted that the said real estate and books should be vested in the Library Company of Philadelphia aforesaid, its successors and assigns forever, in trust for the support and increase of the said Loganian Library. This collection of books, of which the appellee is thus the trustee, now exceeds ten thousand volumes, and is one of the most valuable of the kind in the United States. Since the year 1793, the books have always been kept in the same building as those of the Library Company, and under the care of the same librarian. Books may be taken out of the Loganian Library without charge by any person who leaves a deposit of double their value as security. The library is absolutely free.

Additions have also been made to the library by its association, in 1769, with the Union Library Company of Philadelphia, under an act of the legislature, approved on the thirteenth day of March of that year; in 1771,

with the Associated Library Company and the Amicable Company; by a bequest in the year 1804, by John Bleakley and the Rev. Samuel Preston; by the bequest, in the year 1827, of the Mackenzie Library; and by numerous other gifts and bequests of books from time to time, none of them very large, but together forming a valuable collection which for nearly one hundred and fifty years has been freely open to the citizens of Philadelphia.

The number of books thus belonging to the Library Company now exceeds one hundred thousand volumes.

The corporation is composed of members, and is maintained by their annual contributions and from the income derived from such property as has been given to it, and from fees paid for the use of the books from persons not members.

All the profits and income of the corporation, after defraying the necessary expenses of maintenance, are applied to the purchase of books. The institution is managed by twelve directors, annually chosen by the members, who receive no compensation for their services, and the use of the books is given—

1. Without charge or compensation to all persons using them within the library building;

2. To all members, with certain usual limitations as to the number of volumes that may at any time be taken for use without the building;

3. To all persons, for a small compensation, who wish to use the books without the building, and give security for their return.

The original purpose for which the corporation was created was the collection and use of books by the members at their homes, as a circulating library. It was the

first of that kind in this country, and has ever since preserved its character. The profits arising from subscriptions and other sources are devoted exclusively to the expense of the library and to its increase, and cannot be employed for the pecuniary use or benefit of the members.

The legislature, by an act approved March 3d, 1826, provided that "From and after the passing of this act, the building, and lot of ground situate on South Fifth street, in the city of Philadelphia, whereon the same is erected, and wherein the books belonging to The Library Company of Philadelphia and the Loganian Library are deposited, together with the books and other property of the said institution kept therein, shall be and hereby are exempted from taxation for the term of seven years." This exemption was subsequently made perpetual.

After the adoption of the New Constitution and the passage of the act of 1874, the appellee presented to the Board of Revision of Taxes a memorial setting forth, in substance, its origin as just stated, and adding:—

"That the collection of books belonging to your memorialists, besides those which constitute the stock of an ordinary circulating library, comprehends books purchased systematically and designedly at an expense beyond that within the means of the general public, on scientific, artistic, mechanical and religious subjects, which are open to all for gratuitous study, and that of the advantage and benefit of this, artisans, mechanics and scientific men habitually avail themselves. So that by this means, as well as through the ordinary working of the institution, an amount of useful knowledge has been diffused throughout the community of invaluable importance, which could not otherwise be as well obtained, and which exceeds that which is afforded by the best educational institutions this Commonwealth has as yet been able to give.

"That, as above appears, the Library Company was in its origin created and endowed from motives of pure public advantage, so they aver it has ever since been carried on in the same spirit; and that which has been contributed in money by the now long series of its members has always resulted far more in that public advantage than in benefit to themselves; indeed, not at all to them, except as part of the public.

"That in all times and in none more than in the present, the distribution of useful knowledge, the dissipation of ignorance and error by proper culture, the substitution of refinement and serious study for material pleasures, and that training of the intelligence which produces able-minded citizens, have been considered to be of not less importance to a State than the care of its bodily sick and poor and feeble; and when the means to secure these ends have been given gratuitously, to be equally within the scope of any true definition of charity.

"That the new Constitution of this Commonwealth, in prohibiting the legislature from passing any law exempting property from taxation, except (among other cases which do not concern your memorialists) those of 'institutions of purely public charity,' must, as your memorialists submit, have had in view no such narrow test of charity as would exclude institutions like their own, for so to do would have also excluded universities, colleges, scientific bodies, indeed, every benevolent and beneficent body in the Commonwealth, except hospitals and almshouses.

"That the legislature of this Commonwealth, acting on a wide and sensible interpretation of the words of the Constitution, many of its members being fresh from the deliberations out of which that Constitution grew, and with a distinct recollection of what must have been there meant by the phrase 'public charity,' by the act of May 14th, 1874, provided amongst other things that 'all hospitals, universities, colleges, seminaries, associations and

institutions of learning, benevolence or charity, with the grounds thereto belonging, &c., founded, endowed and maintained by public or private charity, should be exempt from every county, city, borough, bounty, road, school and poor tax,' which your memorialists submit must be, in the first instance, and at least until the question is determined by the highest judicial tribunal in the Commonwealth, an authoritative declaration binding on all bodies, except that highest tribunal; that for the purposes and within the meaning of that clause of the Constitution, learning, benevolence and charity, whenever gratuitously given or distributed, are synonymous or at least equivalent terms; and that to teach, to help and to succor are purposes in which the Commonwealth recognizes no difference."

Upon consideration of this memorial, the Board of Revision of Taxes decided that the property actually used by the appellee for the purposes of its library was exempt from taxation.

ARGUMENT.

The question will be considered under three heads, viz.:—

1. The appellee is a purely public charity within the provision of the Constitution.

2. It is an institution of learning within the act of 1874, and this legislative interpretation of the Constitution is valid.

3. The decision of the Board of Revision of Taxes cannot be reversed in a collateral proceeding.

I.—The Appellee is a Purely Public Charity within the Provision of the Constitution.

Institutions such as this have invariably been held to be "charities, within the legal definition of that term."

Every one knows the difference between the legal and the popular definition of charity. According to the latter, it is charity to give to a beggar--it is none to add to the wealth of a rich hospital. According to the former, it is just the reverse.

And the extent to which the law supports charity is shown in that,

1. It sets aside in its favor the statutes of mortmain and the rule against perpetuities, and

2. It waives in its favor the sovereign right of taxation.

A charity was defined by Mr. Binney, in his celebrated argument in Vidal *vs.* Girard, 2 Howard, to be—

"Whatever is given for the love of God or for the love of your neighbor, in the catholic and universal sense; given from these motives and to these ends; free from the stain or taint of every consideration that is personal, private and selfish."

So Lord Camden, in Jones *vs.* Williams, Amb., 652, described a charity as "a gift to a general public use which extends to the poor as well as the rich."

So in Gerke *vs.* Purcell, 25 Ohio St., 243, it was said, "The meaning of the word 'charity,' in its legal sense, is different from the signification which it ordinarily bears. In its legal sense it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose."

But, perhaps, the fullest definition is contained in Jackson *vs.* Phillips, 14 Allen, 556, wherein Mr. Justice Gray said, "A charity in a legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion; by relieving their bodies from disease, suffering or constraint; by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, *or otherwise lessening the burdens of government.* It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."

And hence it is that gifts to found institutions similar to the present have always been held to be gifts to charitable purposes.

Thus, of a gift to the British Museum; Trustees *vs.* White, 2 Sim. & Stu., 594.

> "This is an institution established by the legislature for the collection and preservation of objects of science and art, partly supplied at the public expense and partly from individual liberality, intended for the public improvement," &c.—LEACH, V. C.

To establish a perpetual botanical garden for the public benefit; Townley *vs.* Bedwell, 6 Vesey, 194.

A gift to the United States of America, to found at Washington, under the name of the Smithsonian Institute, "an establishment for the increase and diffusion of knowledge among men;" President of the United States *vs.* Drummond, cited 7 House of Lords Cas., 141, 155.

This case is a remarkable illustration of the extent to which a bequest for charitable uses will be sustained,

and how inherent in our race is the idea that education is a governmental duty. The government of the United States, being a purely artificial corporation, created for certain specified purposes of government and with powers limited specially to those ends, consented to act as trustee for a charity to educate (not its own citizens, but) mankind at large. And it has since then administered the trust, and made up deficiencies resulting from imprudent loans of the trust funds.

So, of a bequest to trustees, to be applied "according to their discretion for the advancement and propagation of education and learning all over the world;" Whicker *vs.* Hume, 7 House of Lords Cas., 124.

To establish an institution for studying and endeavoring to cure maladies of any quadrupeds or birds useful to man; University *vs.* Yarrow, 23 Beavan, 159; affirmed, 1 De Gex & Jones, 72.

To maintain "public lectures for the promotion of moral, intellectual and physical instruction and education of the inhabitants of Boston;" *re* Lowell, 22 Pickering, 215.

To "print, publish and propagate the sacred writings of Joanna Southcott;" Thornton *vs.* Howe, 31 Beavan, 14.

To "distribute good books among poor people in the back part of Pennsylvania;" Pickering *vs.* Shotwell, 10 Barr, 23.

To the Mayor of Philadelphia, to expend the income "in planting and renewing shade trees, especially in situations now exposing my fellow-citizens to the heat of the sun;" Cresson's Appeal, 6 Casey, 437.

To the Pennsylvania University, "to endow a professorship of fine arts;" *id.*, 6 Casey, 437.

To expend the income in rewards for discoveries and improvements on light and heat most useful to mankind; American Academy *vs.* Harvard College, 12 Gray, 551.

So in Miller *vs.* Porter, 3 P. F. Smith, 292, of a bequest "of $50,000, to be expended in the purchase of a lot and the erection of a college or university, *with library-rooms*, &c., to be located in or near Tarentum, together with my library, and *$6000 additional, to be expended in the purchase of useful books for the library*, and it is my wish that the said college or university be known as the Porter University or College."

Numerous other authorities to the same effect will be found in 2 Perry on Trusts, section 700, and the question as to a library and reading-room was directly decided in Drury *vs.* Natick, 10 Allen (Mass.), 179.

A testatrix devised and bequeathed her estate "to the inhabitants of the town of Natick, for the purpose of founding and establishing a literary institute for the use and benefit of all the inhabitants of said town, under and according to the provisions and regulations hereinafter contained.

"Said institute shall be named and called the Morse Institute, and its object and purpose shall be to promote and disseminate learning and intelligence among the inhabitants of said town by the means of a library, to be composed of the best standard works in the various departments of science and literature; and also by means of a reading-room, if the funds hereby created shall be found sufficient, and the trustees herein named shall deem it advisable to establish the same. * * Said library and reading-room shall be forever free for the use of all the inhabitants of said town, subject to such rules and regulations as said trustees may from time to time establish."

"A doubt was expressed by one of the learned counsel," said Gray, J., in delivering the opinion, "whether this was a public charity. But the court can see no foundation for any doubt upon this subject. * * It is well settled, both in England and America, that in determining what uses are charitable within the statute of Elizabeth, courts are to be guided, not by its letter, but by its manifest spirit and reason, and are to consider, not what uses are within its words, but what are enclosed in its meaning and purpose. There are no better illustrations of this than in the cases of gifts to towns and cities and for the promotion of education and useful knowledge. * * The only modes of education enumerated in the statute are schools of learning, free schools and scholars in universities. But gifts for the promotion of science, learning and useful knowledge by other means than schools or colleges or direct instruction of pupils or students are equally public and charitable. * * Charities for the promotion of education and learning have not been confined in this Commonwealth within the words of the statute of Elizabeth. Chief Justice Shaw, in the case of Count Rumford's Legacy, said, 'That a gift designed to promote the public good, by the encouragement of learning, science and the useful arts, without any particular reference to the poor, is regarded as a charity, is settled by a series of judicial decisions and regarded as the settled practice of a court of equity; and held that a gift in trust to pay the income in rewards for discoveries and improvements on light and heat most useful to mankind was charitable; American Academy *vs.* Harvard College, 12 Gray, 551. In the case of the Lowell Institute, a bequest to provide for the delivery of public lectures in the city of Boston, upon philosophy, natural history, and the arts and sciences, for the promotion of the moral, intellectual and physical instruction and education of the inhabitants of the city, was held to

be a charity; Lowell, appellant, 22 Pick., 215. And in Northampton *vs.* Smith, 11 Met., 390, the court recognized the validity of a bequest, payable at a future day, to a town, to establish model and experimental farms to promote the knowledge of the art and science of agriculture. The apparently inconsistent statement of Chief Justice Shaw, in Sanderson *vs.* White, 18 Pick., 333, that since the passage of the statute of 43 Elizabeth, all gifts are to be deemed charitable which are enumerated in that statute as such, and none other, is shown by referring to the case of Morice *vs.* Bishop of Durham, which he cites in its support, to have omitted, either by accident or as immaterial to the case then under consideration, the words added by Sir William Grant, and in substance repeated by Lord Eldon in that case, or which by analogies are deemed within the spirit and intendment; 9 Vesey, 405; 10 Vesey, 541. See also Sohier *vs.* St. Paul's Church, 12 Met., 250; Earle *vs.* Wood, 8 Cush., 445, and cases cited.

"This gift to the town of Natick, to establish a library for the use of all the inhabitants was, therefore, clearly a public charity."

The principle of this decision, that the courts of Massachusetts are not restrained to the objects enumerated in the statute of Elizabeth, and that libraries, being within the province of the statute, are the same as though directly named therein, applies with increased force in Pennsylvania, where it is familiar, that, in the language of Gibson, C. J., in Witman *vs.* Lex, 17 Sergeant and Rawle, 93, "Not professing to found our jurisdiction on the statute of Elizabeth, we are not bound, like the English courts, to restrain it to cases specifically enumerated in the preamble."

So in Mann *vs.* Mullin, 4 Weekly Notes, 255, the Supreme Court (per Sharswood, J.) said:—"The foundation upon which the doctrine of charitable uses rests in

this State, is firmly settled. While the statute of 43 Elizabeth is not in force, the principles which the English chancery has adopted on the subject obtain here, not by virtue of the statute but as part of our common law. The fact is that those principles were recognized and applied in England before the statute, which only introduced a new remedy. Hence, trusts for charities with us have always been upheld and enforced, no matter how uncertain were the objects, and though the effect evidently was to create a perpetuity."

The same doctrine will be found in the previous cases of Wright *vs.* Linn, 9 Barr, 433, and Zimmerman *vs.* Anders, 6 Watts and Serg., 218.

And by the act of 26th April, 1855 (P. L. 331, Purdon, 207, pl. 18), it is expressly provided that "No disposition of property hereafter made for any religious, charitable, *literary* or scientific use shall fail for want of a trustee," and the doctrine of *cy prés* is extended to such dispositions.

The same doctrine was again held in Beaumont *vs.* Oliveira, Law Rep., 6 Eq. Cas., 534, wherein the Royal Society and the Royal Geographical Society were declared to be charities. These societies were supported by voluntary contributions and by private gifts; neither schools nor teaching were conducted under their auspices, and the corporations had for their object the improvement "of natural knowledge and the improvement and diffusion of geographical knowledge."

Upon appeal this was affirmed, Lord Justice Selwyn saying, "The objects of both these societies are public, and they are both societies for the advancement of objects of general public utility; and the vice-chancellor has referred to the judgment of Sir John Leach, in Attorney-General *vs.* Heelis (2 Sim. & Stu., 67), in which he said, '*I am of the opinion that funds supplied from the gift of the Crown, or from the gift of the Legislature, or*

from private gift, for any legal public or general purpose, are charitable gifts, to be administered by courts of equity.' It was said by the counsel for the appellants that Lord Eldon, in Attorney-General *vs.* Mayor of Dublin (1 Blight, N. S., 312), had expressed his dissent from the judgment of Sir John Leach, in Attorney-General *vs.* Heelis; but in the case of Attorney-General *vs.* Eastlake (11 Hare, 205), the present lord chancellor, when vice-chancellor, pointed out that this expression of dissent on the part of Lord Eldon related to a different part of the judgment of Sir John Leach. After stating (11 Hare, 222) that the exception taken by Lord Eldon to the judgment in Attorney-General *vs.* Heelis was that the source from which the funds came is not material, as stated by Sir John Leach, but that the criterion is the purpose to which they are applied, and the question is, whether that is a charity or not; he says:—'*It is sufficient to say it is a large and general purpose for this town, although not beyond the limits of the town.*"

By a similar application of this doctrine in The City of Philadelphia *vs.* The American Philosophical Society, 6 Wright, 9, the latter society were declared to be exempt from taxation; and the same decision was made concerning the University of Pennsylvania, in The City *vs.* The Trustees of the University, 8 Wright, 361.

And upon principle, it is impossible to discriminate between an institution for educational purposes, where education is imparted by others, such as a college (which is expressly named in the statute of Elizabeth and universally conceded to be a charity), and a library open to all, where a student can teach himself. *

The case of the appellee comes clearly within the doctrines which are so settled.

---

* The case of Thompson *vs.* Shakespeare, 1 DeGex, Fisher & Jones, 399, and Carne *vs.* Long, 2 *id.*, 75, are plainly distinguishable.

The former was a bequest to trustees, "to form a museum at Shakespeare's house, in Stratford, *and for such other purposes* as my said trustees shall think

The appellant has gone outside the record to make two allegations, viz., that "the use of the books by the general public is a very incidental one," and that "it is not all encouraged by the officers." For these, there is not a particle of evidence. It is matter of history that since 1774 the members of Congress in Philadelphia not only used the books at the library, but took them home free of charge—that the members of the legislature for a long period of time did the same—that the

---

fit and desirable, for the purpose of giving effect to my wishes;" and it was obviously held not to be a charity, the chancellor saying:—"I think we might get over the alleged uncertainty as to the erection of a museum at Shakespeare's house, because applying the common understanding to that phrase 'museum' we could perfectly well direct what ought to have been done, and at Shakespeare's house, which is the locality. But then follows what seems to me to be fatal to the bequests as to private individuals, 'and for such other purposes as my said trustees, in their discretion shall think fit and desirable for the purpose of giving effect to my wishes.' *This is something beyond the formation of a museum, and it is something not necessarily* ejusdem generis, *when this is not to be considered a charity, and then it is 'for giving effect to my wishes.'*"

In Carne *vs.* Long, the bequest for the purchase and preserving books was for the use of the subscribers, *and was restricted to such subscribers.* It was obviously held not to be a charity, but a mere association for the mutual benefit of the contributors, and of no other persons. The facts were these:—The Penzance Library was established for the "purpose of purchasing and preserving books *for the use of the subscribers*," *and was restricted to such subscribers.* The public were not admitted to consult the books, except when strangers, and then only upon a proper recommendation, and for no longer than one month. By rule XXVII., "the property in the books and everything else belonging to the library shall be altogether vested in the officers for the time being, *who shall be trustees for the subscribers*," and by rule XXIX. it was provided, "the institution shall not be broken up as long as ten members remain; but whenever the number shall be reduced below ten, *all donations shall be returned to the donors or their representatives who may claim the same; and the remaining books and other articles shall be forthwith sold by public auction* and the proceeds appropriated to the foundation and support of some scientific institution in the town of Penzance, to be determined by a majority of the remaining members."

No one can doubt the law of these cases, and it was recognized in this State in the recent case of Swift *vs.* Easton Society, 23 P. F. Smith, 262, in which a beneficial society, whose benefits were confined exclusively to its own members, was obviously declared *not* to be a charity, inasmuch as "its benevolence begins and ends at home."

officers of the British army, when it occupied Philadelphia in 1777, took out books for which they paid hire; and at this day the number of the general public who annually use the books exceeds ten thousand.

And as to the other allegation, even if it were true (which is denied), it is submitted that the purpose of a charity cannot be subverted because of the unauthorized act of one or more of its officers.

The number of those by whom the library is or can be used is indefinite and constantly changing, and all sums received from the hire of books and the annual payments of shareholders or commuters are applied solely to the expenses of maintenance and the increase of the stock of books.

Another material fact is that the property of the corporation can never be sold or divided, or applied to the benefit of any individual, whether member or stranger. The original charter precludes even the possibility of such a division, as it is there provided, " That for the increase and preservation of said library every member of the said company shall and do pay into the hands of the company's treasurer for the time being the sum of ten shillings on the first Monday in May, *in every year forever;* and in default of these payments *any delinquent shall forfeit his share in the books and estate of the said company, and be no longer a member.*

If it be objected that the directors who manage the library are elected by the commuters or members, and not by the public at large, and hence the charity, however great, is private and not public, the answer is that the argument proves too much. Every charity is notoriously governed by some sort of board—whether visitors appointed by the sovereign—trustees appointed by deed or will with provisions for successors—or managers chosen by a greater or less number of those who desire

benefit from it. The test is, not how are they appointed, but for what end do they work? Is it for gain or profit; is it that the benefit is restricted to the members, or does the indefinite public benefit thereby? As the court below said:—

"Some system of government, some regulations of administration are necessary in all large bodies; provided they be reasonable, and not repugnant to the general purpose, they are valid and do not affect the character of the institution."

It was for the sovereign in granting the charter to determine this.

And, finally, if it be objected that "after all, this is merely a subscription library," the answer is thus given:—

No one can doubt that an individual may give $100,000 to establish a public library, which will not the less be a purely public charity because founded by one person alone.

So a hundred persons may, in like manner, give $1000 each, and with like result.

And the result is the same, whether they actually pay in the present, or bind themselves to pay in the future.

Or whether they bind themselves to pay a sum down or by installments.

So the result is the same, if these installments take the form of annual subscriptions (and, in point of fact, it is notorious that most of our charities are supported by annual subscriptions).

And the conclusion follows that these donors, commuters, subscribers, members, do not thereby exclude themselves from the benefit of the charity—else the logical result would be that whenever a charity was supported by public funds (*i. e.*, by taxation) the public itself was excluded.

Nor is the case affected by the fact that the donors or subscribers may themselves derive benefit from the charity. Inside the building they have no greater rights than any of the indefinite public. It is only that they can take books out by annual commutation, instead of paying every time. As to this, the Court below has said :—

"The principle of commutation is familiar. It is as old as the history of tithings in England; as universal as the convenience and the necessities of business everywhere. The law prohibits a common carrier from discriminating between persons; it requires him to carry all men the same journey for the same price; yet there is, probably, no railroad in the country that does not issue season or mileage tickets, or commutation in some form or other to its local customers, and this has never been held to impair or infringe upon its public character as a common carrier. Such regulations, within reasonable limits, are mere administrative details, necessary in all but the most insignificant business, and not in any way affecting the general character of the institution."

And even if the *motive* of the commuters in thus securing a benefit to themselves was purely selfish, yet this cannot affect or defeat the contract which the Government made with the corporation, when it created it a public charity, and which it could enforce if that design were perverted. If the motive of all those who endow charities were suffered to taint the charity itself, there would be an end to the law of charities.

No one can doubt that when a charter defines the purpose of a corporation and provides machinery for carrying out the purpose, the machinery becomes part of the purpose. In this case, the charter declares the purpose to be a public charity, and provides as part of

the machinery for its maintenance the subscription of members, who, in common with the indefinite public, are to use the books, and this, therefore, amounts to a declaration by the State that this is a legitimate mode of conducting the charity.

And even if this were not so, yet, as the court below said :—

"This privilege, almost the only one in which any distinction is made between the members and the general public, is not an undue privilege or justly obnoxious to the charge of being a private profit. But even this privilege is a regulation, not a part of the fundamental law of the corporation, and if it were held to be an undue privilege, repugnant to the public character of the charity, the result would be, not that the charity would become less purely public, but that the privilege would be void."

In a word, the whole matter may be thus summed up :— The test is, are the benefits to be confined to the members themselves, or are they extended to that indefinite class, the public?

As to the first, we have the authority in this State of the State *vs.* Easton Society, 23 P. F. Smith, 362, already cited (*supra*, page 15, note), where a beneficial society whose benefits were confined exclusively to its own members, was declared *not* to be a charity, and as to the second, we have the authority of Bethlehem *vs.* Perseverance Fire Company, 31 *id.*, 457, in which a fire company, organized for "the protection of the property of our fellow-citizens from fire," was held *to be* a charity, the Court saying, "its object was not for the private gain and profit of its members, but for the public benefit. It existed for no other or different purpose. The property which it acquired in aid of its object was, therefore, for charitable uses."

II.—The appellee is an institution of learning within the act of 1874, and this legislative interpretation of the Constitution is valid.

In determining the standpoint from which this statute is to be viewed, the appellant has confused two doctrines of construction, viz.:—That which governs statutes which confer exemption from taxation, and that which governs statutes passed to interpret and carry into effect constitutional provisions.

No one denies what the appellant contends, viz., that statutes of exemption which confer special privileges not possessed by the public in general are construed strictly against him who seeks to bring himself within the exception. And for this obvious reason: the State has delegated a portion of its sovereignty, and the delegated power will be restrained within the narrowest grounds.

But, on the other hand, a statute, passed to interpret and carry out a provision in a Constitution, grants nothing not before possessed by the citizen, but is merely a ministerial act to practically enforce what has been previously declared to be the public policy of the State.

Hence the contention that laws which exempt from taxation are to be strongly construed in favor of the sovereign and against the subject, not only loses all its force when applied to the case of a clear legislative act alleged to sin against an alleged constitutional prohibition, but becomes a sword in the hand of the other side.

When, therefore, the Constitution declares that "institutions of purely public charity" may or shall be exempt from taxation, and the legislature decides and so enacts, that "associations and institutions of learning" are, among other classes of subjects, institutions of purely public charity, and we show that we are an association and institution of learning, the burden of proof lies on the appellant to prove that the legislature was wrong, and every intendment will be made that it was right.

The argument of the appellant turns the question upside down, and seeks to interpret the Constitution as if it were a letter of attorney.

The question arising as to the validity of legislative interpretation of such constitutional provisions as the present, is not a legal one in the technical sense of that word—nor is it a political one in the technical sense—it is rather *a question of statesmanship*, growing out of the practical needs of modern and advancing civilization.

Why do governments exempt from taxation certain classes of subjects?

The answer lies in the question, Why do governments impose taxes?—It is simply a question of civilization.

Among the savages, there is no system of taxation. There are no public roads—no court-houses or public buildings—no public schools—no churches—and, of course, no charity.

As we get higher, we find public roads (such as they are)—some kind of courts of justice—prisons (generally for temporary confinement, for the death penalty is the cheapest and best suited)—some kind of places of worship—but no public schools—no hospitals—nor any charity.

It is only when we ascend into the family of highly civilized nations that we find the system of government recognizing, as a part of its functions, the care of the diseased body, and the care and education of the unsound, the feeble and the untaught mind.

And it has come to pass that, at the present day, it is part of the recognized duty of a civilized State, apart from providing court-houses, prisons, &c.—

1. To provide for its poor—even for its criminal poor—as is seen with us by our poor laws, houses of refuge, &c.

2. To provide for the insane, the sick (particularly the contagious sick), the old, the feeble-minded, &c.; as is seen by our hospitals, almshouses, &c.

3. To provide for the decent interment of the dead.

4. To provide for the widows and orphans of those who have died in the cause of their country, and for the support of those who are wounded and disabled.

5. To encourage religion, irrespective of sect; as is seen by all our legislation since the first settlement of the province.

6. To educate the children of the State; as is seen by our public school system.

And with respect to most of these classes of charity, our State has, very recently, followed the example of other States, and established, as a permanent institution, a "Board of Commissioners of Public Charities," whose work, set forth in their annual reports, is familiar to all.

In all this, the motive of the State is simply an enlightened self-interest—to keep healthy the body politic, and to avoid the scandals and evils which would otherwise result.

And it carries out these ends either—

1. By direct taxation (such as the school tax, poor tax, &c.), or what is practically the same thing,

2. By gifts of public money; which, of course, means money derived from taxation, as the State has no money of its own.

Now, if any one, from a higher motive, comes forward to aid the State as to any of these functions of government, the State considers that in so far as he thus helps her with her burdens, he is entitled to rank with her (in other words,

to speak very technically, that he is entitled to be subrogated to her), so far as taxation is concerned.

This is the reason of all the legislation in our own and other States exempting certain classes of property from taxation. And a review of our legislation within the last quarter of a century shows that the constitutional provision was not so much to redress a crying evil as—

1. To consolidate or crystalize the previous State policy by generalizing the grounds of legislative interference, or, in other words, to produce uniformity of legislation, and

2. To exclude special legislation as to those charities which were not *properly*, that is, *"purely"* public, substituting, of course, as to particular cases, the judgment of the court for the undue liberality of the legislature.

This was thus demonstrated by the Court below:—

"Counsel have collected together a list of the one hundred and thirty acts of the State Legislature, passed between 1850 and 1873, exempting private or corporate property from taxation, and they have been summarized as follows:—

1. Institutions of public benevolence for the poor	20
2. Hospitals	16
3. Literary, scientific and educational institutions	19
4. Religious—churches and parsonages	32
5. Cemeteries or burial-places	15
6. Military institutions	6
7. Institutions of private benevolence	13
8. Miscellaneous and doubtful	9
Total	130

"Some of these were at best only private charities, and some of them, notably in the fifth class—cemeteries—were not charities at all, but mere trading corporations for private and individual profit. The large majority, however, were true charities, both in the legal and the popular sense, and were worthy objects of legislative aid; but it was felt

to be a hardship that that aid should be rendered as a matter of individual patriotism, granted to one and withheld from another, as the views of successive legislatures might be more or less liberal on the subject. To remedy this evil the New Constitution provided, first and chiefly, that all exemptions from taxation should be by *general laws*, and secondly, that these general laws should include only the classes of property named. Bearing in mind that institutions of public benevolence for the poor, hospitals, literary, scientific and educational institutions, and most of the military institutions in class six above (being like the Lincoln Institute and Soldiers' Orphans' Schools), are all included under the general class of public charities, it is plain, that, tried even by the standard of the present Constitution, the long list of exemptions in the one hundred and thirty acts referred to would still be valid, except so far as they include church property not used for public worship, cemeteries for private profit, and institutions of private benevolence. This comparison of the legislation of the last quarter of a century on the subject, with the legislation still permitted under the present Constitution, demonstrates clearly that the primary intent of this constitutional provision, as of so many others in the same instrument, was not so much to limit the scope of exemptions to charities as to destroy the obnoxious feature of favoritism by special legislation. The key-note to the whole clause is in the permission to exempt only by *general laws*."

The list of statutes thus referred to is as follows:—

I. Public Benevolence for the Poor.

	Years.	Page of Pamphlet Laws.
Union Benevolent Society	1854	486
Friends' Asylum	1854	486
Northern Association of Philadelphia	1855	107
Union School	1855	424

	Years.	Page of Pamphlet Laws.
Home Friendless Children	1855	424
Church Home	1860	282
Soup Societies—Western	1861	33
Philadelphia Lying-in Charity	1863	199
Orphans' Home	1863	299
Poor-House, Wayne county	1863	492
Penn Widows' Asylum	1864	964
Union Temporary Home for Children	1865	612
Ladies' United Aid, M. E.	1868	1258
Southwark Soup Society, Philadelphia	1871	115
North-western Soup Society, Philadelphia	1871	115
Howard Institution	1871	157
Baptist Home	1871	208
Catholic Home for Destitute Children	1871	501
Foster Home of Philadelphia	1872	808
R. E. belonging to Sisters of Charity, Erie	1873	954

II. Hospitals.

New Brighton Retreat (Insane)	1863	351
Citizens' Volunteer Hospital	1864	170
Northern Dispensary, Philadelphia	1864	868
Southern Dispensary	1864	868
Christ's Church Hospital	1865	612
Jewish Hospital Association	1867	937
Children's Hospital	1867	1386
German Hospital, Philadelphia	1868	469
Susquehanna Female College	1869	269
Reform Hospital of Pennsylvania	1871	1225
Marine Hospital	1872	149
Presbyterian Hospital	1872	583
Germantown Hospital	1872	712
Philadelphia Orthopedic Hospital	1872	984
Jewish Hospital Association of Philadelphia	1872	1072
German Hospital of Philadelphia	1873	192

III. Literary, Scientific or Educational.

	Years.	Page of Pamphlet Laws.
Academy of Fine Arts	1854	486
Philad'a Society to Support Charity Schools	1854	486
Blansville Female Seminary	1855	31
Olome Institute	1855	173
Oley Academy	1857	532
Dickinson College	1857	693
Philadelphia City Institute	1863	101
Moyamensing Institute	1863	193
School-House Sisters Holy Cross	1863	199
Washington and Jefferson College	1865	270
Palatinate College	1868	602
Philadelphia City Institute	1868	816
Industrial Home for Girls	1869	492
Bloomsburg Literary Institute	1869	543
Loller Academy	1869	886
Greenwood Seminary	1870	813
Citizens' Library Association of Washington	1870	603
West Town School, Chester county	1870	1162
Phila. Society for Support of Charity Schools	1872	738

IV. Religious—Churches, Parsonages, &c.

Roxborough Lyceum	1863	202
Sisters of St. Joseph	1863	269
E. Penn Bible House	1863	454
Howard Sunday-school	1865	473
Locust Street Mission	1865	560
Calvary Monumental Church	1867	835
Howard Sunday-school	1868	383
Parsonages, &c	1868	383
Home Missionary Society	1869	319
M. E. Church of Shippensburg	1869	886
Parsonage, Titusville	1869	1117
Lutheran Parsonage, Donegal	1870	823

	Years.	Page of Pamphlet Laws.
Methodist Parsonage, Washington	1870	1422
Church of Crucifixion	1871	206
Presbyterian Congregation of Mechanicsburg	1871	1467
Blockley Baptist Parsonage	1871	1486
Asbury M. E. Parsonage, Philadelphia	1871	1486
Trendle Spring Luthern Cong., Mechans'g	1871	1514
Lutheran Congregation, Mechanicsburg	1871	1514
Methodist Parsonage, Mechanicsburg	1872	134
Church of God, Mechanicsburg	1872	134
Parsonage, Rimersburg	1872	435
Woman's Christian Association, Pittsburg	1872	789
1st Presby. Ch. Parsonage, Big Sp., Cumb. Co.	1872	930
Catholic Philopatrian Institute	1872	899
Evan. Luth. Church, Shippensburg, Par	1872	999
St. John's Church, S. Erie Borough	1873	928
Parsonage of Bishop of P. E. Ch., Pittsburg	1873	1058
African Episcopal Ch. of St. Thomas, Par	1873	1059
Parsonages in Bradford county	1873	1082
Certain Parsonages in Franklin county	1873	1085

V. Cemeteries and Burial-Places.

Burial-Grounds	1852	460
Washington Cemetery	1854	567
Prospect Cemetery	1865	912
Morris Cemetery	1867	120
Beaver Cemetery	1867	188
Germantown and Chestnut Hill Cemetery	1868	334
Axes Burial Ground	1868	793
Union Hill Cemetery Company	1869	347
Burial-Lot Sharon, Mercer county	1869	757
Greenwood Cemetery	1870	95
Forest Hill Cemetery	1870	1182
Mount Lebanon Cemetery	1870	381
Old Oaks Cemetery	1871	64
Burial-Grounds and Cemeteries, Philad'a	1871	771
Bradford Cemetery, Chester county	1872	877

VI. Military Institutions.

	Years.	Page of Pamphlet Laws.
Lincoln Institution	1866	368
First City Troop	1867	885
Ladies Soldiers' Aid of Weldon	1867	922
National Guards	1868	916
Military Academy	1868	201
Soldiers' Orphans' Schools	1869	95

VII. Institutions of Private Benevolence.

Masonic Property	1867	151
Lodge A. Y. M	1868	587
Grand Lodge A. Y. M	1868	1147
Wheatley Dramatic Association	1870	856
Silver Spring Lodge of O. F. New Kingston.	1871	164
Grand 1st Lodge of Odd-Fellows	1870	1414
Sunbury Masonic Hall Association	1871	1436
Odd-Fellows' Hall, Drifton, Luzerne Co.	1872	285
Grand United Order of Odd-Fellows of American Hall	1872	369
Colored Masons' Hall, Philadelphia	1872	489
Masonic Hall Association, Harrisburg	1872	1147
Samson Hall, K. of P., of Philadelphia	1872	1148
Odd-Fellows' Hall of Canton, Bradford county	1872	1350

VIII. Miscellaneous or Doubtful.

American Mechanics' Hall	1863	119
Telegraph Company	1863	438
Protestant Hall Association	1863	350
Manayunk Sons of Temperance	1866	977
Boarding Home Young Women	1868	875
Pittsburg Church Guild	1870	611
United American Mechanics' Hall	1870	1022
Milton Town Hall and Market House Co.	1871	1528
Mechanicsburg Hall and Market Company.	1872	1380

Such, therefore, was the State legislation for nearly a quarter of a century before the New Constitution, and it demonstrates what the Court said, that "the primary intent of the Constitution was, not so much to limit the scope of exemption to charities, as to destroy the obnoxious feature of favoritism by special legislation."

Now, what is the test of a public charity?

It is, whether it is to any reasonable, practical extent, open to the *indefinite* public; and, conversely, that is not public which is restricted to classes which exclude the indefinite public. But, so long as the indefinite public, or certain parts of it, can share the benefit, almost everything else is immaterial.

Thus,

1. *Location* is immaterial. Fairmount Park is not the less public because the inhabitants of Philadelphia may use it more than the inhabitants of Erie. As the Court below said:

"The smallest street in the smallest village is a public highway of the Commonwealth, and none the less so because a vast majority of the citizens will certainly never derive any benefit from it. It is enough that they may do so when they choose."

The Supreme Court of Massachusetts affirmed a general principle when it decided that a library for "all the inhabitants of the town of Natick" was a public library, because any of the indefinite public that should become an inhabitant, could use it if he chose; Drury *vs.* Natick, 10 Allen (Mass.), 179, *supra*, page 10

One of the many charities at this day administered by the city through its Board of Trusts, is that called "The

Spring Garden Fuel Charity," which is restricted to "the poor of said district, residing in said district *East of Broad street.*"

2. The *means of support* are immaterial—whether by endowment or subscription.

The chartered name (A. D. 1751) of the Pennsylvania Hospital, is "The *Contributors* to the Pennsylvania Hospital," and the legislature gave two thousand pounds towards it, on condition that a similar sum should be subscribed by individuals. It is still mainly supported by contributions.

So the University of Pennsylvania, the old Volunteer Fire Companies, the Royal and Geographical Societies of London, the American Philosophical Society, and many others which have been judicially determined to be public charities were or are more or less supported by contribution.

On the other hand, Girard College is wholly supported by endowment; as is the case with all the charities administered by the city of Philadelphia through the Board of City Trusts, and this does not make them the less charities.

Therefore it is settled, here and elsewhere, that a charity is none the less purely public because endowed by private means. The source of its support or continuance is immaterial, so long as the purpose is a public one;

Thomas *vs.* Ellmaker, 1 Parsons' Eq., 98.

Attorney-General *vs.* Heelis, 2 Sim. and Stu., 67 (*supra*, page 14).

2 Perry on Trusts, section 707.

3. That a *part* of the indefinite public is *excluded*, is immaterial.

To be efficient, charity must be, to some extent, exclusive. No charity can be so catholic as to embrace everything. No one would contend that the Wills Hospital for the Blind was not a charity, because it does not admit the deaf and dumb, or the insane.

The Girard College charity is only for the benefit of children who are

1. Poor,
2. White,
3. Male,
4. Orphans,
5. Between the ages of six and ten years,

and all outside of this category are excluded.

As the Court below said :—

"Thus Girard College excludes, by a single word, half the public by requiring that only *male* children shall be received; the great Pennsylvania Hospital closes its gates to all but *recent* injuries; yet no one questions that they are public charities in the widest and most exacting sense."

So Girard's bequest for the purchase of fuel was limited to those who were

1. Poor,
2. White,
3. Housekeepers and roomkeepers,
4. Of good character,
5. Residing in the city of Philadelphia.

So of the Scottin legacy, the Paul Beck soup legacy, the Grover legacy, the George Emlen legacy, the Carter legacy, and many other charities at this day administered by the Board of City Trusts.

And the Constitution itself, by providing (Article X., section 1)—

"The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth, *above the age of six years*, may be educated, and shall appropriate at least one million dollars each year for the purpose," recognizes the lawfulness of exclusion.

4. That there is *a class who pay* is immaterial.

In the branch of the contributors to the Pennsylvania

Hospital at Eighth and Spruce streets, one-fifth of the entire number treated are patients who pay; but that fact does not make the institution the less a charity.

In the insane department, across the Schuylkill, nine-tenths of the inmates can and do pay; but the change in the proportions does not affect the question of charity.

The "Pennsylvania Training-School for Feeble-Minded Children" has been a State institution since its establishment in 1853, and is visited by our "Board of Public Charities," and yet there are those who pay; and in the last appropriation by the Act of 18th of April, 1877, it was provided that "So long as applications in behalf of indigent feeble-minded children are pending for admission to said training-school, *no additional paying patients shall be received.*"

In Miller *vs.* Porter, 3 P. F. Smith, 292, already cited (*supra*, page 10), it was objected to the charity that it was not to be free to all. But the Court said:—

"How is the Porter University to be distinguished and taken out of the line of our decisions? You say it was not founded to promote religion or religious education, but to immortalize the founder, and therefore it was not a charity. If the premises be granted, the conclusion does not follow, because, though it has no stamp of religion, and the selfishness of motive may take away from it the high abstract quality of a Christian charity, *yet it was to be a seat of learning—a university—a centre from which the rays of educated intelligence were to radiate in all directions;* and if to found a school-house at the cross-roads of a township be a legal charity, though the selfish motive be apparent, much more to found such a university is a legal charity; and if a charity, within the legal sense of that word, then it is as much within the purview of the statute as the bequest to the West Town School, and Price *vs.* Maxwell rules the case.

"*No matter that it was not to be a free school; it was to*

bring the opportunities of education nearer home to the people; and he who cheapens popular education or tempts a larger number into wisdom's way is a public benefactor, and what he does is, in the sense of the statute, a charity."

In answer to all this, the decision of Judge Clayton in the case of Upper Darby *vs.* The Rector (Leg. Int., August 17th, 1877), is relied on, being alleged to decide that the Burd Orphan Asylum is not a charity, because its benefits are to be applied, first, to the "daughters of clergymen of the Protestant Episcopal Church," therefore, "excluding nearly all the world." But how, if there had been added "and of the Methodist Church"? How, "of all Protestant denominations"? How, if instead of "daughters," the word "children" had been used? The decision will not stand such a test.

A more correct view was taken by the Supreme Court of New Hampshire in Wade *vs.* Manchester, 56 New Hamp., 508, where under a constitutional direction to encourage "the principles of humanity and general benevolence, public and private charity, industry, economy, merit, sobriety and all social affections," the legislature exempted from taxation all houses of public worship, school-houses and seminaries of learning," and it was held that the buildings used and intended for the instruction of females agreeably to the faith and practice of the Roman Catholic Church came within the provision. "It is none of our business in such a case," said the Court, "whether the lady superior of the Sisters of Mercy upholds the dogma of the Roman Catholic Church, or inculcates the doctrine of universal salvation after the most approved method of Protestantism. It would be a reproach to us if it were otherwise, and, happily, under the law, it cannot be."

But the appellant contends that all this may have been so once, but it is now changed, and that the Constitution

ignores everything but "institutions of purely public charity."

The question thus becomes one of interpretation of these words.

Now everybody knows that in construing Constitutions we reason (or try to reason) as statesmen—in construing statutes, we reason as lawyers. A statute is generally remedial, and we look at the old law, the mischief and the remedy, and if the latter has gone too far, it can be altered by subsequent statute.

But a Constitution, though it may also be remedial, is also

Declaratory and
Prohibitory,

and is intended to be (at least for some generations) unalterable, and the growing wants of society must fit themselves into it as best they can. Hence those who are judicially to interpret a constitution, and especially one of recent date, must rise above the mere rules of technical law.

And first, it being conceded that the legislature possesses every power not expressly withheld from it by constitutional prohibition, it is natural that in considering the construction of statutes framed to carry a constitution into effect, great respect should be paid to the legislative interpretation, and where the constitution admits of a broad or a narrow construction, courts do not lightly disturb that which the legislature has adopted.

Upon general principles, this scarcely needs authority, but the question has been recently settled in this court in a very important case.

One of the chief evils which the Constitution tried to cure was special legislation, and Article III., section 7, was very elaborate, providing, among other things, that the legislature should not pass any local or special law

regulating the affairs of cities. The act of May 23d, 1874, classified cities into three classes, the first of these being those having over three hundred thousand inhabitants; and it was argued that as Philadelphia was the only city having that population, to form a class containing but one city was, in point of fact, legislating for that city, to the exclusion of all others, being the very legislation prohibited. But the Court held in Wheeler *vs.* City of Philadelphia, 27 P. F. Smith, that thus to legislate by classification was not unlawful, and in particular referred to the constitution of Ohio, from which our own was borrowed in this respect, and to the decision in Walker *vs.* City of Cincinnati, 21 Ohio St., 14, supporting an act like our own.

The doctrine of legislating specially by means of classification was re-affirmed in the recent case of Board of Education *vs.* Phelps, Pittsburg Legal Journal of November 28th, 1877, and may be said to be now finally established.

And upon this very question of charity, the appellee in its memorial (which forms part of this record) forcibly stated:—

"That the legislature of this Commonwealth, acting on a wide and sensible interpretation of the words of the Constitution, many of its members being fresh from the deliberations out of which that Constitution grew, and with a distinct recollection of what must have been there meant by the phrase 'public charity,' by the act of May 14th, 1874, provided amongst other things that 'all hospitals, universities, colleges, seminaries, associations and institutions of learning, benevolence or charity, with the grounds thereto belonging, &c., founded, endowed and maintained by public or private charity, should be exempt from every county, city, borough, bounty, road, school and poor tax,' which your memorialists submit must be, in the first in-

stance, and at least until the question is determined by the highest judicial tribunal in the Commowealth, an authoritative declaration binding on all bodies, except that highest tribunal; that for the purposes and within the meaning of that clause of the Constitution, learning, benevolence and charity, wherever gratuitously given or distributed, are synonymous or at least equivalent terms; and that to teach, to help and to succor are purposes in which the Commonwealth recognizes no difference."

Upon the question of interpretation by the highest judicial tribunal, it is submited that the history of similar constitutions in other Commonwealths becomes important; and it is instructive learning to find that in all the States which have, within the last quarter of a century, incorporated in their constitutions clauses as to charity and taxation more or less like that in Pennsylvania, *the legislative interpretation has been uniformly the same*, and not one of these has ever been pronounced unconstitutional.

The New England constitutions are first noticed, merely incidentally and to show that education, equally with other matters, was deemed a duty on the part of the State.

CONSTITUTION OF VERMONT, A. D. 1777.

All religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations as the General Assembly of this State shall direct.

Section XLI.

(This was adopted *verbatim* in the constitutions of 1786 and 1793.)

CONSTITUTION OF MASSACHUSETTS, A. D. 1780.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them.

Chapter V., section 2.

CONSTITUTION OF NEW HAMPSHIRE, A. D. 1792.

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the legislators and magistrates in all future periods of this government to cherish the interest of literature and the sciences, and all seminaries and public schools.

Article LXXXIX.

CONSTITUTION OF MAINE, A. D. 1820.

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people, to promote this important object, the legislature are authorized, and it shall be their duty, to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools, and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State.

Article VIII.

CONSTITUTION OF RHODE ISLAND, A. D. 1842.

The diffusion of knowledge, as well as of virtue, among the people being essential to the preservation of their rights and liberties, it shall be the duty of the General Assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.

Article XII., section 1.

Next come the recent constitutions which expressly contain clauses as to taxation more or less like that of Pennsylvania, and it will be seen that in five of them —Ohio, Tennessee, Minnesota, Arkansas and Texas— the words used are *verbatim* the same as in our own, viz., "institutions of purely public charity."

The constitutions will be given in their chronological order.

CONSTITUTION OF OHIO, A. D. 1851.

Laws shall be passed taxing by a uniform rule * * all real and personal property according to its value in money; but burying-grounds, public school-houses, houses used exclusively for public worship, *institutions of purely public charity*, public property used exclusively for any public purpose, * * may by general laws be exempt from taxation.

Article XII., part 2.

Act of March 21st, 1864.

All public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning not used with a view to profit.

Sayler's Statutes of Ohio (1876), page 542.

CONSTITUTION OF INDIANA, A. D. 1851.

The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, excepting such property only for *municipal, educational, literary, scientific, religious or charitable purposes* as shall be specially exempted by law.

Article X., section 1.

Act of 21st June, 1852.

The following property shall be exempt from taxation :—

Second.—Every school-house, court-house, market-house, poor-house and jail, and the land whereon such buildings are situate, and all county lands and buildings set apart for county purposes.

Fifth.—Every building erected for the use of any literary, benevolent, charitable or scientific institution, or erected for the same purpose by any town, township or county, and the tract of land on which such building is situate, not exceeding twenty acres; also, the personal property belonging to any institution, town or township, city or county, and connected with or set apart for any of the purposes aforesaid.

Seventh.—The personal property and real estate of every manual-labor school or college incorporate within this State, when used or occupied for the purposes for which it was incorporated, such real estate not to exceed three hundred and twenty acres.

1 Gavin and Hord's Statutes (1862), page 69.

CONSTITUTION OF MINNESOTA, A. D. 1857.

Public burying-grounds, public school-houses, public hospitals, *academies, colleges, universities and all seminaries of learning*, all churches, church property used for religious purposes, and houses of worship, *institutions of purely public charity*, public property used exclusively for any public purpose shall, by general laws, be exempt from taxation.

Article IX., section 3.

Act (Revised Statutes).

All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:—

First.—Public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning not used with a view to profit. This provision shall not extend to leasehold estates of real property, held under the authority of any college or university of learning in this State.

Second.—All lands used exclusively for grave-yards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculation in the sale thereof.

Third.—All property, whether real or personal, belonging exclusively to the State or United States.

Fourth.—All buildings belonging to counties used for holding courts, for jails, for county offices, with the ground,

not exceeding in any case ten acres, on which such buildings are erected.

Fifth.—All lands, houses and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

Sixth.—All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions, and all lands owned and occupied by agricultural societies, not leased or used with a view to profit, not exceeding three hundred and twenty acres.

Tenth.—All public libraries and real and personal property belonging to or connected with the same.

1 Bissell's Statutes at Large (1873), page 297, section 3.

CONSTITUTION OF OREGON, A. D. 1857.

The Legislative Assembly shall provide by law for a uniform and equal rate of taxation, excepting such only for municipal, *educational, literary, scientific, religious or charitable purposes*, as may be specially exempted by law.

Article IX., section 1.

Act (General Code).

3. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this State, and such real estate belonging to such institutions as shall be actually occupied for the purposes for which they were incorporated.

4. All houses of public worship, and the lots on which they are situated, and the pews or slips and furniture therein, and all burial-grounds, tombs and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop or for any other purpose, except for public worship or for schools, shall be taxed upon the cost valuation thereof the same as personal property to the owner or occupant or to either; and the taxes shall be collected thereon in the same manner as taxes on personal property.

5. All public libraries and the real and personal property belonging to or connected with the same.

Deady & Lane's General Laws (1873,), page 749.

All property used exclusively for State, county, municipal, *literary, educational, scientific, religious, benevolent and charitable purposes*, shall be exempted from taxation.

Article XI., section 1.

ACT (GENERAL STATUTES).

SECTION 3. The property described in this section, to the extent herein limited, shall be exempt from taxation.

First.—All buildings used exclusively as places of public worship, as public school-houses or both, with the furniture and books therein contained, used exclusively for the accommodation of schools or religious meetings, together with the grounds occupied thereby, not exceeding in any one case ten acres, if not leased or otherwise used with a view to profit.

Third.—All buildings belonging to scientific, literary or benevolent institutions used exclusively for scientific, literary or benevolent purposes, together with the lands, not exceeding forty acres, occupied by such institutions, if not leased or otherwise used with a view to profit; and all books, papers, furniture, apparatus and instruments belonging to such association, and used exclusively for scientific, literary and benevolent purposes.

Fourth—All moneys and credits belonging exclusively to universities, colleges, academies or public schools of any kind, or to religious, literary, scientific or benevolent institutions or associations appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association.

Eleventh.—All public libraries.

Twelfth.—Family libraries and the school books of every person and family, not exceeding in value in any one case $100 for each person or family.

General Statutes of Kansas (1863), page 1020.

CONSTITUTION OF WEST VIRGINIA, A. D. 1861.

Property used for *educational, literary, scientific, religious or charitable purposes*, may, by law, be exempted from taxation.

Article VIII., section 1.

(In the constitution of 1872 the same provision was adopted *verbatim.*)

Act (Code).

All property, real or personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say:—

Property belonging to the United States, or which by the laws of the United States is exempt from taxation by or under State authority.

Property belonging exclusively to the State.

Property belonging exclusively to any county, township, city, village or town in this State and used for public purposes.

Property used exclusively for divine worship, parsonages and the household goods and furniture pertaining thereto; burial-grounds; property belonging to colleges, academies and free schools, if used for educational purposes, including books, apparatus, annuities, money and furniture; public and family libraries; property used for public and charitable purposes, and not held or leased out for profit, including property of agricultural associations; property belonging to any public institution for the education of the deaf, dumb or blind, or to any hospital, house of refuge, lunatic

or orphan asylum; to the overseers of the poor or to the board of supervisors as their successors, in their official capacity; fire-engines and implements for the extinguishment of fires and property used exclusively for the safe keeping thereof and for the meetings of fire companies; agricultural productions grown directly from the soil and the products and increase in number of live stock produced within this State during the year preceding the first day of April and remaining unsold on that day in the possession of the original owner or his agent; the produce during the same time of mines, salt-wells and oil-wells within this State remaining unsold in the hands of the producer or his agent on the first day of April, and all manufactured articles and product of mechanical skill and labor produced in this State during the same time and remaining unsold on the first day of April in the hands of the producer or his agent.

Code of West Virginia (1868), page 161.

CONSTITUTION OF NEVADA, A. D. 1864.

The legislature shall provide for taxation of all property excepting such as may be exempted by law for *municipal, educational, literary, scientific, religious or charitable purposes.*

Article IX., section 1.

Act of March 9th, 1865.

All property shall be subject to taxation except—

First.—All lands or other property of the State or of any municipal corporation or of the United States.

Second.—All houses occupied and owned by fire and military companies, also their apparatus, and all squares and lots dedicated or kept open for health, public use or ornament, or belonging to any county, city, town or village in this State.

Third.—*Public libraries*, colleges, school-houses and other buildings for purposes of education, with their furniture, libraries and other equipments and the lots or lands thereto appurtenant and used therewith, so long as the same shall be used for this purpose: *Provided*, That when any of the real property mentioned in this subdivision is private property from which a rent or other valuable consideration is received for its use, the same shall be taxed.

Fourth.—Public hospitals, asylums, poor-houses and other charitable and benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all the furniture and equipments.

Fifth.—Churches, chapels and other buildings for religious worship, with their furniture and equipments.

Sixth.—Buildings and lots owned and used by Freemasons, Odd-Fellows, or by any benevolent or charitable society.

Seventh.—Cemeteries and grave-yards, except when owned as individual property and charges made therefor.

P. L., 273, section 4.

CONSTITUTION OF LOUISIANA, A. D. 1868.

The General Assembly shall have power to exempt from taxation all property actually used for *church, school or charitable purposes.*

Article CXVIII.

Act (Revised Statutes).

Second.—Colleges, school-houses and other buildings for the purpose of education, and their furniture, apparatus and equipments, and the lots thereto appurtenant and used therewith, so long as actually used for that purpose only.

Third.—Public hospitals, asylums, poor-houses and all other charitable institutions for the relief of indigent and afflicted persons, and the lots appurtenant, with all their furniture and equipments, so long as the same shall be actually used for that purpose.

Fourth.—Churches, chapels, convents and other public buildings for religious worship, with the furniture and equipments, and the lots of ground thereto appurtenant and used therewith, so long as the same shall be actually used for that purpose only.

Revised Statutes (1870), page 629.

CONSTITUTION OF NORTH CAROLINA, A. D. 1868.

The General Assembly may exempt cemeteries and property held for *educational, scientific, literary, charitable or religious purposes.*

Article V., section 6.

CONSTITUTION OF 1876.

The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes, *libraries and scientific instruments.*

Article V., section 5.

ACT OF MARCH 7TH, 1877.

What property exempt from taxation:—

2. The property belonging to and set apart, and exclusively used, for the university, colleges, institutions, academies, the Masonic fraternity, Order of Odd-Fellows, Knights of Pythias, Good Templars and Friends of Temperance, schools for the education of the youth or support of the poor and afflicted, such property as may be set apart for, and appropriated to, the exercise of divine worship or the propagation of the Gospel, or used as parsonages, the same being the property of any religious denomination or society: *Provided,* That said exemption shall not extend to more than twenty acres of land, if the excess over twenty acres is of value exceeding one thousand dollars.

5. Arms for muster, wearing-apparel and provisions for the use of the owner and his family, household and kitchen furniture, mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments not exceeding in aggregate value one hundred dollars: *Provided,* That the exemption from taxation shall not exceed one hundred dollars in favor of any individual tax-payer.

P. L., 261, section 12.

CONSTITUTION OF SOUTH CAROLINA, A. D. 1868.

It shall be the duty of the General Assembly to enact laws for the exemption from taxation of all public schools, *colleges and institutions of learning, all public libraries,* churches and burying-grounds, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons.

Article IX., section 5.

Act (Revised Statutes).

Section 6. The following property shall be exempt from taxation, to wit:—

3d. All incorporate public colleges, academies and institutions of learning, with the funds provided for their support, and the grounds and buildings actually occupied by them, and not used with a view to pecuniary profit; but this provision shall not extend to leasehold estates held by others under the authority of any college or other institution of learning.

9th. All property belonging to institutions of purely public charity, and used exclusively for the maintenance and support of such institutions.

Revised Statutes (1873), page 45.

CONSTITUTION OF FLORIDA, A.D. 1868.

Excepting such property as may be exempted by law *for municipal, educational, literary, scientific, religious or charitable purposes.*

Article XII., section 1.

Act of June 24th, 1869.

IV. The following property shall be exempt from taxation :—

Third.—The property of all literary, benevolent, charitable and scientific institutions within this State, as shall be actually occupied and used by them solely for the purpose for which they may have been or may be organized.

Fourth.—All houses of public worship and the lots on which they are situate, and the pews or slips and furniture therein; every parsonage, and all burial-grounds, tombs and rights of burial; but any building being a house of public worship, which shall be rented or hired for any other purpose, except for schools, shall be taxed the same as any other property.

Fifth.—All public libraries, and the real and personal estate belonging to and connected with the same.

Sixth.—All property, real or personal, held by and belonging to any agricultural society in this State, which now is or may hereafter be lawfully organized in pursuance of law.

Rush's Digest (1872), page 641.

CONSTITUTION OF VIRGINIA, A. D. 1870.

The legislature may exempt all property used exclusively for State, county, municipal, *benevolent, charitable, educational and religious purposes.*

Article X., section 3.

Act (Code).

Section 14. All real estate used for the erection of churches or for divine worship, and for a parsonage or for a public library, not exceeding the quantity allowed by law, to be held for such purpose; public burying-grounds appropriated and not for sale; or real estate belonging to any county, city or town, or Masonic, or Odd-Fellows, or like benevolent associations, and used for public or charitable purposes; or belonging to incorporated colleges and academies, and to free schools, theological seminaries and library companies, or used for college or school purposes; or to the University of Virginia; to the Virginia Military Institute; to the institution for the education of the deaf and dumb and blind; to lunatic asylums; to orphan asylums; to the Ladies' Mount Vernon Association; exclusively to the Commonwealth; armories belonging to military organizations, organized by the laws of this State and used exclusively for military purposes; and all such estate used exclusively for the safe-keeping of fire-engines and for the meeting of fire companies, whether owned by a fire company or by a city or town, shall be exempt from taxation: *Provided, however,* That nothing herein contained shall be construed to exempt from taxation any lot or building partially or wholly used for any private purpose, unless the profits arising from such use are applied to public, charitable, benevolent or literary purposes.

Munford's Code (1873), page 289.

CONSTITUTION OF TENNESSEE, A. D. 1870.

All property, real, personal or mixed, shall be taxed, but the legislature may exempt such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for *purposes purely religious, charitable, scientific, literary or educational.*

Article II., section 28.

Act (General Statutes).

Section 542. Of the property above enumerated, the following shall be exempt from taxation. * * *

Third.—All property of any literary, scientific or benevolent institutions, actually used for the purposes for which such institution was created, unless it is invested in stocks or employed in any other than the regular business of such institution.

Fourth.—All houses of religious worship and their appurtenances.

Fifth.—Lands appropriated for the use of schools, and held in trust for the use of a college, academy or other seminary of education.

All the funds of any literary, scientific or benevolent institution, invested in stocks or employed in any lawful manner for the promotion of the object and purposes of such institutions, shall be exempt from taxation.

All property, real, personal or mixed, held by the State or any county, incorporated city or town of the State, which is used exclusively for public or corporation purposes, and such as is held and used for purposes purely religious, charitable, scientific, literary or educational, and personal property to the value of $1000, in the hands of each tax-payer, and all personal property which is the direct product of the soil whilst in the hands of the producer, shall be exempt from taxation, under the revenue laws of this State.

1 Thompson & Steeger's Statutes (1873), page 429.

CONSTITUTION OF ILLINOIS, A. D. 1870.

Such property as may be used exclusively for *school, religious, cemetery and charitable purposes* may be exempted from taxation.

Article IX., section 3.

Act March 30th, 1872.

2. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:—

First.—All lands donated by the United States for school purposes, not sold or leased; all public schoolhouses; all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit.

Seventh.—All property of institutions of purely public charity, when actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit; and all free public libraries.

Tenth.—All property which may be used exclusively by societies for agricultural, horticultural, mechanical and philosophical purposes and not for pecuniary profit.

Revised Statutes of Illinois (1877), 815.

CONSTITUTION OF ARKANSAS, A. D. 1868.

Burying-grounds, public school-houses, houses used exclusively for public worship, *institutions of purely public charity*, public property used exclusvely for any public purpose, shall never be taxed.

Article X., section 2.

Constitution of 1874.

The following property shall be exempt from taxation :— Public property used exclusively for public purposes, churches used as such, cemeteries used exclusively as such, school buildings and apparatus, *libraries, and grounds used exclusively for school purposes, and buildings and grounds and material used exclusively for public charity.*

Article XIV., section 5.

Act of 1873.

Section 5055. All property described in this section, to the extent herein limited, shall be exempt from taxation :—

First.—All public school-houses and houses used exclusively for public worship, including buildings and lot owned and exclusively used by any religious denomination for a parsonage, the books and furniture therein, and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit.

Second.—All public colleges, public academies, all buildings connected with the same, and all lands connected with

public institutions of learning not used with a view to profit. This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning of this State.

Seventh.—All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institution.

Revised Statutes of Arkansas, page 889.

CONSTITUTION OF PENNSYLVANIA, A. D. 1873.

The General Assembly may by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit *and institutions of purely public charity.*

Article IX., section 1.

Act of May 14th, 1874.

All churches, meeting-houses or other regular places of stated worship, with the grounds thereto annexed necessary for the occupancy and enjoyment of the same; all burial-grounds not used or held for private or corporate profit; all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same; founded, endowed and maintained by public or private charity; and all school-houses belonging to any county, borough or school district, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same; and all court-houses and jails, with the grounds thereto annexed, be and the same are hereby exempted from all and every county, city, borough, bounty, road, school and poor tax: *Provided,* That all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except where exempted by law for State purposes, and nothing herein contained shall exempt the same therefrom.

P. L. (1874), 158.

CONSTITUTION OF MISSOURI, A. D. 1875.

Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, may be exempted from taxation when the *same are used exclusively for religious worship, for schools or for purposes purely charitable.* Also, such property, real and personal, as may be used exclusively for agricultural and horticultural societies.

Article X., section 6.

Act of April 28th, 1877.

Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, are hereby exempted from taxation, when the same are used exclusively for religious worship, for schools and for purposes purely charitable.

Wagner's Supplement, page 330, section 3a.

CONSTITUTION OF ALABAMA, A. D. 1875.

The property of private corporations, associations, and individuals of this State shall forever be taxed: *Provided,* This section shall not apply to *institutions or enterprises devoted exclusively to religious, educational or charitable purposes.*

Article X., section 6.

(No statute has been found carrying this into effect.)

CONSTITUTION OF NEBRASKA, A. D. 1875.

Such property as may be used exclusively for agricultural and horticultural societies, *for schools, religious, cemetery and charitable purposes* may be exempted from taxation by general law.

Article IX., section 2.

Act of February 18th, 1877.

No property shall be exempt from taxation except such property as may be used exclusively for school, religious, cemetery and charitable purposes.

Act of February 19th, 1877, P. L., 45, section 2.

Each incorporated city shall have power to establish a public library and reading-room * * * The property of such library shall be exempt from taxation.

P. L., 151–153.

CONSTITUTION OF TEXAS, A. D. 1876.

The legislature may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial, *not held for private or corporate profit*, all buildings used exclusively and owned by persons or associations of persons for school purposes, *and institutions of purely public charity.*

Article VIII., section 2.

Act of August 21st, 1876.

All property described in this section shall be exempt from taxation, that is to say:—

First.—Public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same; and all lands connected with public institutions of learning; and all endowment funds of institutions of learning not used with a view to profit.

Second.—All lands used exclusively for grave-yards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculation.

Sixth.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions, not leased or used with a view to profit; and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

Ninth.—All public libraries and personal property belonging to the same.

P. L., 276.

CONSTITUTION OF COLORADO, A. D. 1876.

Lots with the buildings thereon, if said buildings are used solely and exclusively for religious worship for schools *or for strictly charitable purposes*, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation unless otherwise provided by existing law.

Article X., section 5.

(No statute has been found carrying this into effect.)

Georgia has no constitutional provision, but in the code of 1873 the following property is exempted from taxation:—

3. All buildings erected for and used as a college, incorporated academy or other seminary of learning.

7. All poor-houses, almshouses, houses of industry and any house belonging to any charitable institution.

8. *The real and personal estate of any public library and that of any literary association.*

Code of Georgia (1873), page 144.

From this compilation, it will appear—

1. That in the New England States, the old constitutions remain unchanged, and that all of them recognize education as a duty of the State.

2. That in twenty-one States, there are "New Constitutions," all containing clauses recognizing the legislative right to exempt certain classes of subjects from taxation.

3. That in twenty of these, that right has been made the subject of legislation, and invariably with a broad construction of the constitution.

4. That in twelve of them, viz.:—
Minnesota,
Oregon,
Kansas,
West Virginia,
Nevada,
North Carolina,
Louisiana,
Florida,
Virginia,
Nebraska,
Texas and
Georgia,
the legislature considered, and so enacted, that *public libraries* came within the scope of the respective constitutional provisions.

5. That in eight of them, viz.:—
Ohio,
Minnesota,
Kansas,
West Virginia,
South Carolina,

Illinois,
Pennsylvania and
Texas,

the legislature considered that the proper test was whether the institutions therein exempted were or were not used *with a view to profit.*

6. That in five of them, viz.:—

Ohio,
Minnesota,
Arkansas,
Pennsylvania and
Texas,

identical words in the constitution, viz., "institutions of purely public charity" have been identically interpreted by their legislatures.*

7. And that this includes all the States in the Union except eleven, viz., California, Connecticut, Delaware, Iowa, Kentucky, Maryland, Michigan, Mississippi, New Jersey, New York and Wisconsin, in none of which does there appear to be any constitutional legislation on the subject.

---

* Thus:

1. Ohio (A. D. 1851). "All public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning not used with a view to profit."

2. Minnesota (A. D. 1857). "All public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning not used with a view to profit."

3. Arkansas (A. D. 1868). "Libraries, and grounds used exclusively for school purposes, and buildings and ground and material used exclusively for public charity."

4. Pennsylvania (A. D. 1873). "All hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed and maintained by public or private charity."

5. Texas (A. D. 1876). "All lands connected with public institutions of learning, and all endowed funds of institutions of learning not used with a view to profit. All public libraries and personal property belonging to the same.

The volumes of reports in all these States have been carefully searched, and in no reported case has any of these statutes been decided to be unconstitutional. On the contrary:

The Ohio constitution (in 1851) was the first which used the expression which has been copied into our own, "institutions of purely public charity," and the legislative enactment exempted,

"All public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same, *and all lands connected with public institutions of learning not used with a view to profit.*"

In Gerke *vs.* Purcell, 25 Ohio State R., 299, the exact question now under discussion, viz., whether the statute was broader than the constitution, was presented.

The plaintiff Purcell was the archbishop of the Roman Catholic Church in Cincinnati, and filed a petition to enjoin the collection of taxes on different parcels of real estate held by him in trust for the sole use of the church as places of public worship, for its public schools, parsonages and other purposes. The schools were carried on *with no view to profit,* and were supported chiefly out of the revenues of the church, and to a small extent by such payments as parents could afford to make.

The Supreme Court held that the parsonages were not exempt from taxation, but that the schools were, as being "institutions of purely public charity."

"The classification of the property that may be exempted from taxation," said the Court, "is much more minute in the statute than in the constitution. The constitutional

provision deals with legislative power and defines its limits. The statute deals directly with the property, and classifies it according to legislative discretion; and if the property which the statute undertakes to exempt comes within the exemptions authorized by the constitution, it is immaterial how the property is classified or described.

"The word public, is used in various senses. It is sometimes applied to describe the use to which the property is applied; at others to describe the character in which it is held. The circumstance that the use of the property is free, is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public on equal terms, the use will be public whether compensation be exacted or not. Thus, on some public highways tolls are charged, while others are free, but both are equally public. Railways owned by private corporations and the canals owned by the State are public highways, yet compensation is exacted from the public for their use. A college consisting of a private corporation and having a private foundation, is devoted to a public use, yet the use is none the less public because tuition is charged.

* * * * * * * * * * *

Admitting the charitable nature of the use to which the property is devoted, the next question is whether it comes within the description of "institutions of purely public charity." It is to be observed that the duty to tax, as well as the property to be exempted from taxation, has reference to property. It is property alone that is required to be taxed, and property also is the object of the authorized exemptions. Two questions arise on this branch of the subject. 1. Whether the charity to which the property is devoted is purely public; 2. Whether it is competent for the legislature to recognize these schools as they are established and carried on, as institutions within the meaning of the constitutional provision.

"As to the first of these questions, it seems to us the charity is to be regarded as purely public. For the purpose of determining the public nature of the charity, it is not material through what particular forms the charity may be administered. If it is established and maintained for the usual benefit of the public and so conducted that the public can make it available, this is all that is required. * * Laying out of view the nature of the organization by which the charity is administered, the property in question stands on the same footing as the property devoted to the support of colleges and other higher institutions of learning not founded by the State.

"All of these institutions stand, as respects their claim to exemption from taxation under the constitution, on the ground of their being institutions of purely public charity. If property is appropriated to the support of a charity which is purely public, we see no good reason why the legislature may not exempt it from taxation, without reference to the manner in which the legal title is held and without regard to the form or character of the organization adopted to administer the charity. To illustrate: If the organization by which these schools are maintained were incorporated, no question could be made as to the existence of authority to exempt their property from taxation; now if the property is appropriated to the same public uses and the same ends are accomplished, we see no constitutional obstacle to prevent the legislature from exempting it as fully without incorporation as with it. What the legislature might accomplish indirectly, through the intervention of a corporation—a thing of its own creation—it may accomplish directly. Nor is it essential to the existence of an institution as an organization that it should be constituted under corporate or legislative authority; *in re* Manchester College, 19 Eng. L. and Eq., 404.

"A consideration of this provision of the statute shows

that the word 'public,' as here applied to school-houses, colleges and institutions of learning, is not used in the sense of ownership, but as descriptive of the uses to which the property is devoted. The schools and instruction which the property is used to support must be for the benefit of the public. The word *public*, as applied to school-houses, is obviously used in the same sense as when applied to colleges, academies and other institutions of learning. The statute must be construed in the light of the state of things upon which it was intended to operate. At the time of its passage there were few, if any (and we know of none), colleges or academies in the State owned by the public, while there were many such institutions in the different parts of the State owned by private, corporate or other organizations, and founded mostly by private donations.

"Besides, the condition prescribing that the property, in order to be exempt, must not be used with a view to profit, does not seem appropriate if intended to apply only to institutions established by the public. Such institutions are never established and carried on by the public with a view to profit. But the condition has marked significance when applied to private property, which is often used for the purposes of education, like property in ordinary business, as a means of profit. *But when private property is appropriated to the support of education for the benefit of the public without any view to profit, it constitutes a charity which is purely public. When the charity is public, the exclusion of all idea of private gain or profit is equivalent, in effect, to the force of 'purely,' as applied to public charity in the constitution.*"

When the Supreme Court of Pennsylvania came to decide the case of Wheeler *vs.* The City, 27 P. F. Smith, it cited and relied upon the Ohio decision in Walker *vs.* City of Cincinnati, 21 Ohio State R., 14, in which the doctrine

of classification of cities was held to be constitutional, though the Ohio court simply announced its conclusion and gave no reason for it. *A fortiori*, it is submitted, will this court give consideration to a decision so carefully reasoned as that of Gerke *vs.* Purcell.

The conclusions arrived at by the court below were, however, reached rather from principle than from technical authority.

"I have not thought it necessary," said the learned judge, "to notice in detail the authorities cited by the learned counsel on either side. Some of them are very close and decisive upon the points made in this case, but the subject is extensive and this opinion has already reached a very great length; and I have therefore preferred to rest the case upon general principles which I believe to be unquestionable."

And at the risk of repetition, it may be again said that the question involved in the case is not a legal one—it is hardly a political one—it is a question of statesmanship, depending largely upon historical development of modern recognized principles of civilization.

But when we return from the region of history to that of law, it is an important element in the argument that each and every class of subjects exempted from taxation by the Pennsylvania act of 1874 had, long before, been judicially declared to be public, and therefore *purely* public charities.

CLASSES OF SUBJECTS EXEMPTED BY THE ACT OF 1874.	PREVIOUS DECISIONS AS TO THESE CLASSES OF SUBJECTS.
1. "All churches, meeting-houses, and other places of religious worship."	1. Expressly mentioned in statute of 43 Elizabeth; Earle *vs.* Wood, 8 Cushing, 437; Dexter *vs.* Gardner, 7 Allen, 245; 2 Perry on Trusts, section 701, and a cloud of other authorities.
2. "All burial-grounds not used or held for private or corporate profit."	2. Lloyd *vs.* Lloyd, 10 Eng. Law and Eq., 139; 2 Simmons (N. S.), 255; Dexter *vs.* Gardner, 7 Allen, 247; Swasey *vs.* American Bible Society, 57 Maine, 527; Willis *vs.* Brown, 2 Jurist, 987.
3. "Hospitals."	3. Reading *vs.* Lane, Duke on Uses, 81; Attorney-General *vs.* Kell, 2 Beavan, 575; Helham *vs.* Anderson, 2 Eden, 296; Mayor *vs.* Elliott, 3 Rawle, 170.
4. "Universities, colleges, seminaries, academies."	4. Porter's Case, 1 Rep., 25 *b.*; Attorney-General *vs.* Wharwood, 1 Vesey, 537; Christ's College 1, Eden, 10; Platt *vs.* St. John's College, Duke, 77; Attorney-General *vs.* Andrew, 3 Vesey, 633; Jesus College, Duke, 78; Attorney-General *vs.* Bowyer, 3 Vesey, 714; Attorney-General *vs.* Margaret Professorship, 1 Vernon, 55; Vidal *vs.* Girard, 2 Howard, 127; Cresson's Appeal, 6 Casey, 437; Miller *vs.* Porkin, 3 P. F. Smith, 292.
5. "Associations and institutions of learning, benevolence and charity, founded, endowed and maintained by public or private charity."	5. Drury *vs.* Natick, 10 Allen, 169; Jackson *vs.* Phillips, 14 Allen, 552; Pickering *vs.* Shotwell, 10 Barr, 23; President of the United States *vs.* Drummond, cited 7 House of Lords Cases, 141, 155; Beaumont *vs.* Oliveira, Law Rep., 6 Eq. Cases, 534; 4 Chan. Ap., 309.
6. "School-houses belonging to any county, borough or district."	6. Hadley *vs.* Hopkins, 14 Pickering, 241; State *vs.* McGowen, 2 Iredell Eq., 9; Rugby School *vs.* Duke, 80; Gibbons *vs.* Maltyard, Popham, 6; Attorney-General *vs.* Williams, 4 Brown's Chan., 525; Attorney-General *vs.* Bowles, 2 Vesey, 547; Graham *vs.* Graham, 1 Hawks, 96; Attorney-General *vs.* Lonsdale, 1 Simons, 109; Martin *vs.* McCord, 5 Watts, 494; Wright *vs.* Lynn, 9 Barr, 433.
7. "Court-houses, jails."	7. Of course included in constitutional provision of "public property used for public purposes."

While it has been preferred to present this case upon principle, it is yet conceived that the question of the constitutionality of this act has been more or less settled by the recent decision of this Court in Mullen *vs.* Commissioners, 4 Weekly Notes, 502, wherein it was held that the land upon which an unfinished church was being erected was not exempt from taxation under the act of 1874, as the question of exemption from taxation must be determined by the use, and not the ownership, of the property. And this is supported by all the recent decisions elsewhere;

Washburn College *vs.* Commissioners, 8 Kansas, 344.
Vail *vs.* Beach, 10 *id.*, 214.
St. Mary's College *vs.* Crowle, *id.*, 450.
Cincinnati College *vs.* State, 19 Ohio, 110.
Common Council *vs.* McLean, 8 Indiana, 332.

III.—The decision of the Board of Revision of Taxes cannot be reversed in a collateral proceeding.

By the act of March 14th, 1865, P. L., 320, section 1 (Purdon, page 1375, pl. 123), it was enacted, "That the Court of Common Pleas of Philadelphia County shall, once in every three years, before the time of the revision of the taxes for the succeeding year and as often as vacancies shall occur, appoint two persons deemed the most competent, who with the senior city commissioner for the time being, shall compose the board of revision of taxes of the county, a majority of whom shall be a quorum; who shall have the power to revise and equalize the assessments by raising or lowering the valuation either in individual cases or by wards, to rectify all errors, to make valuations where they have been omitted, and to require the attendance of the assessors or other citizens before them for examination on oath or affirmation, either singly or together, with power to forfeit the pay of assessors ratably to their annual compensation for each day's absence when their attendance is

required; and the said BOARD OF REVISION SHALL HEAR ALL THE APPEALS AND APPLICATIONS OF THE TAX-PAYERS, SUBJECT TO AN APPEAL FROM THEIR DECISION TO THE COURT OF COMMON PLEAS OF THE COUNTY, WHOSE DECISION SHALL BE FINAL, AND, IF THE APPEAL TO THE COURT SHALL BE GROUNDLESS THE APPELLANT SHALL PAY THE COSTS OF COURT; the city commissioners *shall have no power to correct or revise the taxes*, but shall receive in writing the request of the tax-payers to have their taxes reduced *and lay them before the board of revision* at the next meeting; the board of revision shall hear the tax-payers of their respective wards in succession, of which notice shall be given as now required by law by the commissioners and assessors, and the said board of revision shall, alone, by a majority of them, exercise all the powers heretofore vested in the county board of revision, but shall not in any instance lower the aggregate valuation of the county; they shall meet as often but not oftener than is necessary to dispatch the business which their duties require of them, and shall hold stated meetings on the first Saturday of each month and receive the same compensation as the city commissioners, but the senior commissioner shall receive no additional pay for his services in the board of revision."

By a supplement of February 2d, 1867, P. L., 137 (Purdon, 1378, pl. 137), it was also provided :—

"SEC. 2. That the Board of Revision established by the act to which this is a supplement, approved the fourteenth day of March, one thousand eight hundred and sixty-five, and this supplement, shall have and exercise all and singular the powers heretofore, by law, conferred upon the commissioners of the city of Philadelphia, and the county commissioners of the different counties of this Commonwealth, in relation to the assessors, and the assessments and collection of taxes within the city and county of Philadelphia, and the correction of all valuation and

return therefor; and they shall issue the precepts to, and receive the returns of the assessors, procure the assessment books, and cause the duplicates to be made out and issued to the receiver of taxes, make the returns required by law to the State revenue board, and have the exclusive custody and control of all books relating to the assessments of taxes, and keep them arranged according to wards and dates; and also have the custody and control of the duplicate surveys, when the same shall have been made by the department of surveys, they may issue certificates to show how property has been assessed, to be used with the same effect as the original books of assessment, as evidence in relation to the title of property; they shall report to councils, through the mayor, the aggregate of the assessments on or before the first day of November in each year; the city commissioners of Philadelphia shall exercise none of the powers embraced in this act or the act to which this is a supplement.

"SEC. 3. That the said board of revision are hereby authorized and empowered to issue their precept to the several assessors of the said city and county of Philadelphia, in the year of the triennial assessment and to the assessors of any ward or wards of said city in which they shall deem a new assessment necessary in any subsequent year other than the triennial year, requiring them to return the names of all taxable persons residing within the respective wards and all property taxable by law, together with the just valuation of the same, in the manner now prescribed by law for the triennial assessment; that the said board shall have the power to revise and equalize the assessments prescribed by the first section of the act approved the fourteenth day of March, in the year one thousand eight hundred and seventy-five, to which this is a supplement, in any and every year."

And by the act of April 12th, 1873, P. L. 715 (Purdon, 1821, pl. 4), it was further provided that the Board of

Revision should divide the city into districts, with power to re-arrange the same as often as deemed expedient; that they should appoint and remove assessors, and by section 4, "The said Board of Revision are hereby authorized and empowered to affix the seal of the city of Philadelphia in official certificates they may be authorized to issue by law."

The defendant was appointed by virtue of an act approved March 24th, 1870, P. L. (Purdon 1379, pl. 142), wherein it is provided that the receiver of taxes should "appoint a person to be denominated collector of all *outstanding* or *delinquent* taxes due the city;" and that it should be "the duty of the said receiver of taxes to hand over immediately to said collector the registries of all *outstanding* or *delinquent* taxes due and owing said city, and upon the first day of February, A. D. 1871, and each succeeding year, the registry of DELINQUENTS of the previous year."

By section 4 it is provided, "In case the said collector of outstanding and delinquent taxes shall neglect or omit to file any claim placed in his hands for collection not paid, or shall neglect or omit to proceed to sell any real estate against which a lien exceeding ten dollars may have been filed according to the foregoing provisions of this act, such neglect or omission shall be deemed a misdemeanor in office, and punishable upon conviction by a fine not less than three times the amount of said delinquent taxes, and removal from office by the court in which such conviction shall take place: *Provided*, That the provisions of this section shall not apply to any claims for taxes which the board of revision may decide cannot be collected, and may order to be stricken from the registry.

"SECTION 5. The compensation of the said collector shall be five per cent. upon the amount he shall collect and pay over to the city treasury."

Hence it is submitted:—

1. That the Board of Revision of Taxes is the tribunal in whom exclusive jurisdiction over this subject is principally vested.

2. That the statute creating this special jurisdiction having provided an express mode of appealing therefrom, all other methods are presumably excluded.

3. That the defendant can only collect taxes which appear to be outstanding and delinquent upon the books prepared under the authority of the Board of Revision and delivered to the Receiver of Taxes, and as by those books the complainant was not subject to taxation, it can in no sense be a delinquent tax-payer.

4. That the fourth section of the act of March 24th, 1870, is express that the Collector of Delinquent Taxes is neither accountable for, nor in any way concerned with, the allowances and disallowances of the Board of Revision, but is absolutely bound thereby.

WM. HENRY RAWLE,
R. C. MCMURTRIE,
For Appellee.